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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/758,402      | 01/15/2004  | David Rives          | SEALED 3.0-041      | 6095             |

530 7590 08/11/2005

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| EXAMINER |
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LONEY, DONALD J

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| ART UNIT | PAPER NUMBER |
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1772

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/758,402

Applicant(s)

RIVES ET AL.

Examiner

Donald Loney

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Bynoe (4492064).

Bynoe discloses a material containing a ribbed 18 polyethylene foam layer 14 and a polyethylene film layer 13 attached thereto on the opposite side of the ribs. The thickness of the foam is 3-10 centimeters (i.e. 1.2-3.95 inches). Refer to figures 1 and 2 along with column 3, lines 8-51.

3. Claims 1, 2, 15, 19, 20 and 23-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Petersen (5067298).

Petersen discloses a foam layer 14 containing ribs 16 wherein at least a portion of the rib is discontinuous (at 18 in figure 2 per instant claim 19). A film 12 is disposed on the second side of the foam layer. Another film 20 is disposed on the free ends of the ribs, per instant claim 20. The examiner deems the deck structure as equivalent to a flooring system as recited in claims 23-27 since no particular materials are recited to distinguish therefrom. Layer 10 and/or 20 can be considered the floor and/or subfloor. Therefore meeting the two alternatives of claims 25 and 27 wherein the ribs face the floor and sub floor respectively. Again, since no specific materials are recited to

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distinguish from the prior arts layers the examiner deems the structure in the prior art as reading upon the structure recited in the claims.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6-12, 14 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bynoe.

The primary reference teaches the invention substantially as recited except for the specific thicknesses, density of the foam, height of the ribs and additives to the layers. See the 35 U.S.C. 102 rejection above.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to Bynoe to form the material of the specific thicknesses, density of the foam and height of the ribs motivated by the fact one would pick the parameters thereof to adapt the material to its particular application. The particular additives in claims 16 and 17 would be obvious to one of ordinary skill motivated by the fact that they would provide a known means for an intended function.

6. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bynoe in view of Scheermesser (3222697).

The primary reference teaches the invention substantially as recited except for the triangular shape of the ribs. See the 35 U.S.C. 102 rejection above.

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Scheermesser discloses that ribs in a foam sheet can be either triangular 11 or various other shapes 13, 15, 19.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to Bynoe to form the ribs of triangular shape, as taught by Scheermesser, for the purpose of providing the same function motivated by the fact that Scheermesser teaches that the ribs can be of either the shape as disclosed in Bynoe (see figure 7 in Scheermesser) or triangular. A change in shape or size is generally within ordinary skill in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Loney whose telephone number is (571) 272-1493. The examiner can normally be reached on Mon, Tues, Thurs and Fri. 8AM-4PM, flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read "Donald Loney", with a stylized flourish at the end.

Donald Loney  
Primary Examiner  
Art Unit 1772

DJL:D.Loney  
08/08/05